IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.791 OF 2003
IN
FIRST APPEAL NO.423 OF 2003

Nirmala R. Pandey & Ors. ... Applicants

Vs.

Kanaiyalal P. Shah & Ors. ... Respondents

Mr. P.W. Lad for the applicants.

Mr. A.K. Abhyankar with Mr. Vipul Shukla for the respondents.

Mr. S.N. Kadam, IInd Asstt. to Court Receiver and Mr. A.M. Chaudhary, S.O. present in court.

CORAM: SMT. RANJANA DESAI, J.

DATED: 21ST MARCH, 2005.

P.C.:-

1. Heard the learned counsel for the parties. The appeal filed by the applicants/obstructionists has been admitted by this court. It appears that the applicants are in possession of the suit property. A report has been submitted to this court by the Court Receiver. The report refers to order dated 7/2/1984 passed by this court in Appeal from Order No.460 of 1981. By that order, the appointment of the Court Receiver was confirmed and the Court Receiver was directed not to dispossess the tenants/occupants on the suit land, but to take symbolic possession. It was further directed that all such tenants should pay arrears of rent if any, and future rent to the Court Receiver and the Court Receiver should obtain an undertaking from such tenants not to

part with possession, not to, in any way, sub-let, alienate or create any third party rights in the premises in their respective occupation.

2. It appears that pursuant to this order, the applicants herein are paying rent to the Court Receiver. The Receiver's report states that the applicants have not paid the rent in respect of the premises since the year 2000. Mr. Abhyankar, the learned counsel for the respondents states that, in fact, the applicants have not paid the rent for certain period prior to the year 2000 also.

3. In this civil application, the applicants have prayed that the impugned judgment and decree of the trial court be stayed. Since the first appeal is admitted, some interim arrangement will have to be worked out. In the circumstances of the case, in my opinion, interest of justice will be served if the applicants who are in possession of the suit premises are appointed as agents of the Court Receiver and they are directed to pay all the arrears, file necessary undertakings, execute necessary agency agreement with the Court Receiver and pay the royalty. Hence, I pass the following order.

4. The applicants are appointed as agents of the Court Receiver in respect of the property which is in their possession. The applicants shall file necessary undertakings with the Receiver. The applicants shall

also execute necessary agency agreement with the Receiver and pay such royalty as may be determined by the Court Receiver. The applicants shall clear all arrears of rents within three months from today. So far as the royalty is concerned, the applicant shall abide by the directions given by the Court Receiver. However, the security deposit is dispensed with.

5. I am informed that the Court Receiver has filed suits against the applicants for illegal construction. The applicants shall maintain status-quo as regards whatever construction they have carried out in the suit property. The Receiver shall take care to see that there is no further encroachment.

6. The first appeals are expedited.

7. Civil application disposed of.

8. All concerned to act on the authenticated copy of this order.

(SMT. RANJANA DESAI, J.)